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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 JOANNE HART, on behalf of
4 herself and all others
similarly situated, et al.,

5 Plaintiffs,

6 v.

15 Civ. 4804 (WHP)

7 BHH LLC, et al.,

8 Defendants.

Telephone Conference

9 -----x
New York, N.Y.
10 August 11, 2017
11 10:48 a.m.

12 Before:

13 HON. WILLIAM H. PAULEY III,

14 District Judge

15 APPEARANCES
(Via Speakerphone)

16 BURSOR & FISHER, P.A.
Attorneys for Plaintiffs
17 BY: YITZCHAK KOPEL, ESQ.

18 LEAHY, EISENBERG & FRAENKEL, LTD.
Attorneys for Defendants
19 BY: HOWARD B. RANDELL, ESQ.

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(In the robing room)

THE COURT: Good morning. This is District Judge Pauley. You're on a speakerphone in my robing room, and a court reporter is present recording what's being said.

Would counsel for plaintiffs give his appearance.

MR. KOPEL: Good morning, your Honor. This is Yitzchak Kopel on behalf of plaintiffs.

THE COURT: Good morning, Mr. Kopel.

And counsel for the defendant.

MR. RANDELL: Good morning, your Honor. Howard Randell on behalf of the defendants.

THE COURT: All right. Good morning, Mr. Randell.

I asked my law clerk to set up a conference regarding your joint proposal for a schedule in this case, and certainly while, you know, I don't have a problem with submitting the proposed class notice plan by September 8, I really like to get some understanding about why expert discovery in this case should go on for six months. So who wants to be heard on that?

MR. KOPEL: Your Honor, this is Yitzchak Kopel.

So we had originally, in our original proposal to defendant, had that deadline a bit earlier. It got moved just because of, I guess, you know, preexisting schedules. But the reason that we needed several months before sending out initial expert reports was simply that we had been waiting until certification of the class to run some very expensive testing

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1 of the devices, and as soon as the class was certified, we got
2 on that. But it will take a little bit of time before that
3 testing is complete and we can prepare expert reports, and
4 that's why we had proposed a deadline that was some months out.

5 THE COURT: All right. Look, how many experts do you
6 expect to have?

7 MR. KOPEL: Two.

8 THE COURT: All right. I mean, I certified the class
9 more than a month ago. And quite frankly, why does it take
10 months to test these devices?

11 MR. KOPEL: The only reason is because we're working
12 with some labs that have, you know -- they had other clients
13 and other schedules, and also, you know, there are five
14 different types of pests these devices purport to repel. For
15 three of them, they're insects, and they're relatively easy to
16 test, but the other two, for mice and rats, those are rodents,
17 and sometimes that can be a little more complicated to set up
18 and complete.

19 I do think that we can meet a deadline that is earlier
20 than December 14, but I would request that the Court still
21 allow us to submit reports sometime in late November.

22 THE COURT: All right. I thought that the class here
23 involved pests, not rats.

24 MR. KOPEL: The devices purport to repel ants,
25 spiders, roaches, mice, and rats. So we wanted to -- although

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1 we have literature discussing the efficacy of these devices and
2 we conducted reviews of their tests and we had designed some
3 tests that we wanted to run, we wanted to make sure that we
4 were very thorough and would test the devices, the exact
5 devices at issue with regards to all five pests that the
6 devices are supposed to repel.

7 THE COURT: Look, I think that there's no reason that
8 initial expert reports can't be exchanged by October 31, with
9 rebuttal reports by November 30th and the completion of
10 expert discovery by December 31.

11 MR. KOPEL: Judge, could you repeat the dates for me,
12 please. Thank you.

13 THE COURT: October 31 for initial reports,
14 November 30 for rebuttal reports, and the completion of expert
15 discovery by December 29.

16 And then I'm not fixing a date for dispositive
17 motions. If someone believes they have a dispositive motion,
18 they should request a premotion conference and I'll consider
19 it, and we'll deal with it. But otherwise, I think that the
20 parties should submit a joint pretrial order to me by
21 February 2. And we can have a final pretrial conference in
22 this case on February 9 at 11:00. So I think a class having
23 been certified, it's time to get serious about teeing this case
24 up for a resolution.

25 MR. RANDELL: Judge, Howard Randell on behalf of the

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1 defendant. I have one question, which I don't think would
2 result in any modification of the joint pretrial order or the
3 pretrial conference. Your Honor, you've ordered that rebuttals
4 be completed by November 30 and expert closure on December 29.
5 My experience, given November and what December often entails
6 in terms of scheduling, etc., I'm wondering if it would be
7 possible just to anticipatorily -- at this point I don't really
8 know what the various expert's or counsel's schedules will be.
9 If we can maybe push that date into the middle of January.
10 Just historically, I've sort of found that December is a
11 challenging month just, you know, for people's personal
12 schedules, etc.

13 THE COURT: Mr. Randell, here's what we can do.
14 Rebuttal reports by November 21, okay? And complete expert
15 discovery by December 22. Because I agree with you -- nobody's
16 going to do anything the last week anyway. But that gives you
17 the first three weeks and the last week of November to conduct
18 what essentially are three or four expert depositions. And
19 you're probably going to do them in tandem.

20 MR. RANDELL: Very well, Judge.

21 THE COURT: All right. Anything further at this
22 point?

23 MR. KOPEL: No, your Honor.

24 THE COURT: All right. So I'm going to enter this
25 scheduling order on the docket today, gentlemen. Have a good

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1 afternoon and a good weekend. And get to work on these expert
2 issues. Thanks.

3 MR. RANDELL: Thank you, your Honor, and likewise.

4 MR. KOPEL: Thank you.

5 MR. RANDELL: Bye-bye.

6 (Adjourned)